IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.38892 of 2006
MANOJ KARU @ DINESH CHOUDHARY
Son of Late Mohan Choudhary, resident of
Mohalla- Pratapapur, P.S.- Mehandiganj,
District- Patna
Versus
STATE OF BIHAR
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9 **10.12.2008** By order dated 18.09.2008 notice was issued to the petitioner to show cause as to why the bail granted to him as per the order dated 08.12.2006 be not cancelled since prima facie it appears that the bail was granted on misrepresentation of the fact that one of the co-accused Sonu Kumar was granted bail by order dated 30.11.2005 in Cr. Misc. No. 43651 of 2005 from whose possession also the alleged looted articles were recovered like the petitioner.

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The occasion for considering the order granting bail to the petitioner arose while the bail application of another co-accused namely, Sonu Paswan was being heard vide Cr. Misc. No. 2606 of 2008. The submission was made that co-accused Manoj Karu (this petitioner) was granted bail considering the grant of bail to Sonu Kumar, another co-accused. On examining the record of said case it appears that the accused Sonu Kumar was allowed bail on consideration of the submission that no stolen articles were recovered from his possession and the only allegation against him was that the looted

articles were sold to his father, another co-accused, namely, Sanjeet Kumar and the said Sonu Kumar, a minor, was also present there in the house. Therefore, prima facie it appears that the co-accused Manoj Kumar obtained bail as per the order dated 08.12.2006 on misrepresentation of fact that co-accused Sonu Kumar has been allowed bail and from whose possession also the stolen articles were recovered whereas looted articles were recovered from the house of his father Sanjeet Kumar.

Pursuant to the notice a show cause has been filed on 19.11.2008 stating therein to the effect that his submission that looted articles were recovered from the possession of the co-accused Sonu Kumar is correct. The learned counsel for petitioner submits that the same would be substantiated on perusal of the case diary. It is further stated that Sonu Kumar was not minor. Besdies the above, a reference to the decision of the Hon'ble Supreme Court in the case of Aslam Babalal Desai Vs. The State of Maharashtra, reported in A.I.R. 1993 SC 1 has also been made for the proposition that once bail is granted the same can not be cancelled unless the privilege of bail is misused. The learned counsel for the petitioner submits that there was no misrepresentation of fact nor he misused the privilege of bail. Besides the

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above, it is submitted that the co-accused Sonu Kumar is also charge sheeted under section 395,412, 120B of the Indian Penal code.

The decision of the Supreme court relied upon has no application in the facts of the case. The point fallen for consideration in the aforesaid decision of the Supreme Court was that once bail is granted under section 167(2) Cr. P.C. it can only be cancelled under the provisions of section 437(1) or (2) or 439(1) of the Code of Criminal Procedure since section 167 Cr.P.C. does not empower cancellation of bail. The above decision, therefore, is of no help to the petitioner.

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In the present case the cancellation of bail is under consideration on the ground that the bail was obtained on misrepresentation of fact, and as such, the submission as to whether the petitioner misused the privilege of bail has no relevance in the above facts and circumstances of the case.

Learned Additional Public Prosecutor appearing for the State on perusal of paragraph 32 of the case diary submits that when the police reached along with the co-accused Sonu Paswan and this petitioner to the shop of the co-accused Sanjeet Kumar, the father of accused Sonu Kumar, the shop was found closed thereafter they searched the house of the said Sanjeet Kumar who was

found absconding and on search of his house a bag containing the looted articles which were given to Sanjeet Kumar by the petitioner and the co-accused Sonu Paswan was found. The said co-accused Sonu Kumar who was also present there was arrested by the police. It is, therefore, submitted that in course of search of the said Sonu Kumar except the clothes which he was wearing nothing was recovered from him.

From the above it appears that the petitioner misrepresented the fact in his supplementary affidavit stating to the effect that similarly placed co-accused Sonu Kumar, from whose possession also the looted articles were recovered, was granted bail. The submission that the looted articles were also recovered from Sonu Kumar, is not correct. Therefore, his submission that since said Sonu Kumar was allowed bail he also deserves to be enlarged on bail has no merit. Accordingly, the show cause filed by the petitioner is devoid of any merit, and as such, the same is rejected.

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In consideration of the above, the bail granted to the petitioner as per the order dated 08.12.2006 deserves to be cancelled. The same is accordingly cancelled. The petitioner is directed to surrender within fifteen days from today in the Court of Sri Bijay Kumar Choudhary, Judicial Magistrate, Ist Class, Patna or his successor in

office, in connection with Shashtrinagar Police Station Case No. 770 of 2005 failing which the Court below shall take all coercive steps permissible under law for the arrest of the petitioner.

The order be communicated to the Court below immediately through FAX by the office.

Manish/- **(Shailesh Kumar Sinha,J.)**

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